

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	WC Docket No. 11-42
Lifeline and Link Up Reform and)	
Modernization)	
)	
Telecommunications Carriers)	WC Docket No. 09-197
Eligible for Universal Service)	
Support)	
)	
Connect America Fund)	WC Docket No. 10-90

**NATIONAL LIFELINE ASSOCIATION REPLY COMMENTS ON PETITION FOR
DECLARATORY RULING**

The National Lifeline Association¹ (NaLA) respectfully submits these reply comments on its Petition for Declaratory Ruling (Petition) filed on February 7, 2018 asking the Federal Communications Commission (Commission) to declare that Lifeline eligible telecommunications carriers (ETCs) are permitted to seek reimbursement for all Lifeline eligible subscribers served as of the first day of the month, including those subscribers that are in an applicable 15-day cure period following 30 days of non-usage.² Three parties submitted comments in support of NaLA's Petition and none filed in opposition. Given the consensus that exists in support of NaLA's Petition, the Commission should promptly grant it.

In its Petition, NaLA explained that pursuant to sections 54.407(a) and 54.405(e)(3) of the Commission's rules, "[u]niversal service support for providing Lifeline **shall be provided** directly

¹ NaLA is the only industry trade group specifically focused on the Lifeline segment of the communications marketplace. It supports eligible telecommunications carriers (ETCs), distributors, Lifeline supporters and participants and partners with regulators to improve the program through education, cooperation and advocacy. See <https://www.nalalifeline.org/>.

² See National Lifeline Association Petition for Declaratory Ruling, WC Docket Nos. 11-42 et al. (filed Feb. 7, 2018); *Wireline Competition Bureau Seeks Comment on National Lifeline Association's Petition for Declaratory Ruling*, WC Docket No. 11-42, Public Notice, DA 18-126 (rel. Feb. 8, 2018) (Public Notice).

to an eligible telecommunications carrier **based on the number of actual qualifying low-income customers it serves directly as of the first day of the month,**³ and any subscriber who happens to be in a cure period on the first day of the month is an “actual qualifying” customer that the ETC serves and for which the ETC “shall” receive universal service support. Accordingly, the Universal Service Administrative Company (USAC) was correct when it published guidance on its website that stated “[s]ervice providers must provider [sic] eligible subscribers with service during the cure period and *may include subscribers in the cure period in their monthly snapshot.*”⁴ However, with no rule change and without any explanation, USAC reversed course more than a year later, and the website now states that “[s]ervice providers may not request reimbursement for customers who are in the cure period.”⁵ Because the initial guidance was the only reasonable interpretation of the Commission’s Lifeline usage rules and ETCs had been relying on it for more than a year, the Petition asked the Commission to declare that Lifeline subscribers who are in a non-usage cure period on the snapshot date are eligible to continue to receive reimbursement for services made available to them as of that date, and direct USAC to return to the previous rational and fair interpretation of the rules.

Three comments were filed in response to the Petition, all of which supported NaLA’s request.⁶ In particular, the commenters agreed that because ETCs are required to continue to

³ 47 C.F.R. § 54.407(a) (emphasis added).

⁴ See Petition at Exhibit. NaLA also noted that this guidance was consistent with informal guidance provided by staff in the Wireline Competition Bureau (Bureau) to counsel for numerous ETCs that such subscribers should be included on a reimbursement request.

⁵ USAC, “De-Enroll Ineligible Subscribers,” available at <http://www.usac.org/li/program-requirements/de-enrolling/> (last viewed Mar. 21, 2018).

⁶ See Comments of Sprint Corporation, WC Docket No. 11-42 et al. (filed Mar. 12, 2018) (Sprint Comments); Comments of Smith Bagley, Inc., WC Docket No. 11-42 et al. (filed Mar. 12, 2018) (Smith Bagley Comments); Comments of Q Link Wireless LLC, WC Docket No. 11-42 et al. (filed Mar. 12, 2018) (Q Link Comments). These comments were submitted by both reseller and facilities-based ETCs. Specifically, Smith Bagley describes itself as “a facilities-based ETC

provide services to Lifeline subscribers during the cure period, they should be able to seek reimbursement for those services.⁷ In addition, Sprint and Smith Bagley noted that USAC's new guidance will increase Lifeline administrative costs by unnecessarily complicating the reimbursement process.⁸

Smith Bagley also correctly observed “[t]he Commission’s de-enrollment rules set forth the procedures for terminating a customer’s Lifeline service under a variety of scenarios. In each case where a customer must take action or else be de-enrolled, the ETC must provide a certain amount of notice and an opportunity for the customer to take the required steps to keep their Lifeline service.”⁹

providing Lifeline service to low-income households in Arizona, New Mexico and Utah.” Smith Bagley Comments at 1. However, Smith Bagley conceded in its comments in response to the recent Lifeline Notice of Proposed Rulemaking that it does not necessarily meet the facilities requirement on Tribal lands under paragraph 26 of the Fourth Report and Order, which requires last-mile facilities. *See* Comments of Smith Bagley, Inc. WC Docket No. 17-287 at 7-8 (filed Feb. 21, 2018) (“SBI opposes this [facilities-based] proposal, at least for wireless networks, and especially those operating on Tribal lands. As a wireless provider, SBI can say definitively that there are at least a few dead zones within its network where service is provided through a roaming/resale arrangement with another carrier. Consumers may live in one of these dead zones, yet use their phones throughout SBI’s network. In the few cases where a consumer is served by a roaming agreement at home, the other wireless carrier oftentimes is not an [ETC], precluding a consumer from switching to another facilities-based carrier.”). Smith Bagley’s admission raises the question whether it could certify that it meets the facilities requirement for receiving enhanced Tribal support.

⁷ Sprint Comments at 2; Smith Bagley Comments at 3; Q Link Comments at 2.

⁸ *See* Sprint Comments at 3 (“Reversing long-standing policy and refusing to pay the Lifeline subsidy for end users in the cure period also will introduce significant inefficiencies into the process. Service providers will have to identify and suppress from the Form 497 any subscribers who are in the cure period as of the first of the month. Customers who subsequently have usage during the cure period will have to be identified, and added back to the previous month’s Form 497, which would then be re-filed with USAC. USAC would then have to adjust the Lifeline support payment due to the service provider. This imposes an administrative burden not only on the service provider, but also on USAC.”); Smith Bagley Comments at 6 (Prohibiting reimbursement during the cure period “would mean constant revisions as carriers exclude customers in the ‘cure’ period from reimbursement claims and then re-add customers who cure their non-usage after the snapshot date. Nowhere has the Commission publicly indicated an intent to saddle Lifeline providers with the burdensome task of filing the same reimbursement claim multiple times as a matter of course.”).

⁹ Smith Bagley Comments at 5.

Specifically, section 54.405(e)(1) provides that if an ETC “has a reasonable basis to believe that a Lifeline subscriber no longer meets the criteria to be considered a qualifying low-income consumer under §54.409, the carrier must notify the subscriber of impending termination of his or her Lifeline service.”¹⁰ Additionally, section 54.405(e)(4) states that an ETC “must de-enroll a Lifeline subscriber who does not respond to the carrier’s attempts to obtain re-certification of the subscriber’s continued eligibility as required by §54.410(f); or who fails to provide the annual one-per-household re-certifications as required by §54.410(f).”¹¹ Like the non-usage rule, sections 54.405(e)(1) and 54.405(e)(4) also require the ETC to give subscribers an opportunity “cure” a potential eligibility issue.¹² However, under the new interpretation of the non-usage rule, “USAC only requires the relinquishment of support in the case of non-usage. In all other cases, USAC will allow reimbursement up until the date of de-enrollment.”¹³ Smith Bagley is correct that “[t]he Commission’s reimbursement rules do not provide a basis for such a distinction.”¹⁴

Finally, Q Link expanded on the Petition’s point that prohibiting ETCs from seeking reimbursement during the cure period would be an unconstitutional taking, explaining that “by requiring ETCs to continue to provide service during the cure period, but denying compensation from the Universal Service Fund, the Commission would be mandating that Lifeline subscribers be permitted physically to occupy portions of the ETC’s network facilities and airtime (including

¹⁰ 47 C.F.R. § 54.405(e)(1).

¹¹ 47 C.F.R. § 54.405(e)(4).

¹² Under sections 54.405(e)(1) and 54.405(e)(4), subscribers have 30 and 60 days, respectively, to demonstrate their continued eligibility for Lifeline.

¹³ Smith Bagley Comments at 5.

¹⁴ *Id.* at 6.

airtime capacity purchased from a wholesale provider), without just compensation and without the statutory authorization to engage in a Taking.”¹⁵

CONCLUSION

For the reasons stated in the Petition and the supporting comments, and because there is no opposition in the record to NaLA’s request, the Commission should declare that Lifeline subscribers who are in a non-usage cure period on the snapshot date are eligible to receive reimbursement for services made available to them as of that date.

Respectfully submitted,

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¹⁵ Q Link Comments at 3 (citing *Bell Atlantic Telephone Companies v. Fed. Communications Comm’n*, 24 F.3d 1441, 1445-1447 (D.C. Cir. 1994)).